



Costs Decision

Hearing Held on 4-5 February 2020

Accompanied Site visit made on 5 February 2020

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 March 2020

Costs application in relation to Appeal Ref: APP/N1730/W/19/3232716 Hawley Park Farm, Hawley Road, Blackwater, Camberley GU17 9EF

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Crest Nicholson Operations Ltd for a full award of costs against Hart District Council.
 - The hearing was in connection with an appeal against the refusal of full permission for the erection of 158 dwellings, vehicular access road from Hawley Road and the provision of SANG, public open space, landscaping and associated works – site layout alterations to re-site the blocks of flats from adjacent Fernhill Lane to elsewhere in the site.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The application for costs seeks a full award on substantive grounds on the basis that the Council has prevented or delayed a development which should clearly be permitted in light of the tilted balance and a failure to produce evidence to substantiate the principal reason for refusal on appeal (heritage). The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appeal has to a large extent hinged on the heritage balance given the principal reason for refusal and the fact that both main parties in the statement of common ground¹ (SOCG) agree that the appeal proposal would result in less than substantial harm to the heritage significance of the Hawley Park and Green Conservation Area (HPGCA). The National Planning Policy Framework (NPPF) is clear at paragraph 193 that great weight should be given to the conservation of a heritage asset irrespective of the degree of harm found. The threshold at paragraph 194 of the NPPF is that any harm requires “clear and convincing justification”. Paragraph 196 of the NPPF potentially provides for that justification through a balancing of less than substantial harm against public benefits. The heritage balance was of particular significance to the appeal given footnote 6 of paragraph 11(d) of the NPPF presents a bar to the application of a tilted balance.

¹ Paragraph 8.13

4. The appellant avers that the Council's Planning Committee, in going against the officer recommendation for approval, approached the heritage balance erroneously in terms of the weight to the heritage harm and arriving at a 'net' degree of heritage harm against any heritage benefits. On the other side of the balance the appellant submits that the Council unreasonably reduced the weight to be given to public benefits, in particular the social benefits from additional housing and the wider benefits arising from the scale of SANG provision. Furthermore, the appellant asserts that the LPA could not adequately articulate the degree of harmful impact on the heritage significance of the HGPCA arising from the appeal proposal, including an absence of professional heritage representation to support the Council's decision.
5. Whilst the officer report to the Planning Committee arrived at a paragraph 196 balance that found the public benefits to significantly outweigh the heritage harm, the heritage advice before the Council's Planning Committee, in the form of the comments of the Council's Conservation Officer was that the specific design impact of the appeal proposal, in contrast to the consented scheme, would be harmful to the character and appearance of the HPGCA and an objection was raised.
6. It is clear from the minutes to the Planning Committee on 10 April 2019 (provided with the Council's appeal questionnaire) that Members considered the differences between the consented scheme for 126 dwellings and in particular the impacts arising from the revised design and increases in density and footprint. As the appellant's own quantification table to the hearing helpfully illustrates, there are appreciable differences such that the overall net effect would be a more urbanised form of development and a moderate reduction in the overall openness. The degree of urbanisation and its impact are matters of interpretation and judgement. Whilst I have found differently, I nonetheless do not consider that the Council behaved unreasonably in arriving at its position that the appeal proposal would result in a potentially greater degree of harm to the HPGCA than the scheme already consented. I do not consider the absence of a conservation specialist to be detrimental to assessing the Council's case on this point, which was clearly presented in the Council's Appeal Statement of Case (pages 11-15) and articulated by Mr Lee, a chartered planner for the Council, at the hearing.
7. Whilst there is some dispute about how the Council approached the weight given to the heritage benefits from the SANG it nonetheless remains that the shared position of both parties (as clarified at the hearing) is that the appeal proposal would residually result in a less than substantial harm albeit at the lower end of any spectrum of such harm. It is not the case that within an internal heritage balance the proposed SANG wholly removes the harm. As a matter of judgement, there is nothing irrational to the Council giving great weight to the heritage harm, however small that residual harm may be.
8. In terms of the benefits from the additional housing and the scale of SANG proposed, the weight to be given to these benefits are again matters of judgement. It needs to be demonstrated that the Council's judgements in this regard were unreasonable. In light of the Inspector's interim findings on the emerging Hart Local Plan and the very positive recent performance on delivering housing in Hart I find the Council not to be unreasonable in reducing the weight to these benefits. Notwithstanding, other appeal and secretary of state decisions in Hart, the weight to be given to the benefit of housing, where

there is a demonstrable five year supply of deliverable housing land, is not a “settled” matter as the appellant submits. It remains a matter of judgement as the very latest appeal decision in Hart District at Crondall² (submitted by the appellant) demonstrates. Whilst I have found separately in the appeal decision that the affordable housing proposed should carry substantial weight, I nonetheless find that the Council’s overall approach to weighing the benefit of housing was not irrational given the material changes in circumstance since the extant 126 dwelling scheme was approved at the appeal site.

9. In respect of the benefits of the SANG provision, matters are less clear. There is nothing in the Planning Committee minutes that Members disregarded the SANG as a benefit. I am mindful of Councillor Cockarill’s comments to the hearing that the benefit of the SANG was reduced because it was already regarded as having been secured. Mr Lee further explained that the reduction arises because the net additional 32 homes through the appeal proposal reduce the balance of available SANG to facilitate development elsewhere (as per Council’s Statement of Case, p33). Again, whilst I have found differently to the Council on this point, I do not consider the judgement to reduce the benefit of the SANG provision to have been unreasonable.
10. Whilst I am mindful that the Committee Report identified the benefits significantly outweigh the harm I have found that the Council has not been unreasonable in arriving at the alternative view. Matters here are balanced. Indeed, the Council has not disputed that some of the public benefits would be significant and has agreed in the SOCG (paragraph 8.57) the overall extent of the benefits. My separate appeal decision whilst finding that the public benefits do outweigh the heritage harm to a level that provides a clear and convincing justification is not as resounding as the Committee Report or the appellant’s submissions. The weight to be given to harms and benefits is not always clear-cut and it has not been demonstrated that the Council has behaved irrationally in this regard.
11. On whether the Council unreasonably suppressed further the engagement of the tilted balance at NPPF paragraph 11(d) is questionable. The SOCG identifies development plan policies that are “relevant” to the appeal proposal³, but it does not agree or define those policies “most important” to the appeal. I am clear from what I heard that there is no dispute that HDLP⁴ Policies GEN1 and CON13 are “most important”. Subsequently I have gone on to find that they are out-of-date and as such provide the route in NPPF paragraph 11(d).
12. However, if I look at the appellant’s statement of case, the appeal decisions relied upon, it is clear the focus, including at the hearing, has been on settlement boundaries and HDLP Policies RUR1 and RUR2. Whilst I have agreed that those policies too are out of date, I consider the Council has been reasonable in setting out that the circumstances at the appeal location are materially different. Whilst the Council has referred to the Inspector’s interim findings on the emerging Local Plan this has mainly been in respect of the weight to the social benefits of additional housing.
13. Neither Policies RUR1 and RUR2 formed a reason for refusal and both parties agreed the site was sustainably located. The Council has accepted the principle

² APP/N1730/W/17/3185513

³ Paragraphs 8.4 and 8.8

⁴ Saved Policies of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations

of residential development at the appeal location through both the grant of the 126 dwellings since 2015 and the revised settlement boundary in the very advanced emerging Local Plan. Consequently, the Council has not been unreasonable in its view that Policies RUR1 and RUR2 are not the most important for the purposes of paragraph 11(d). As such the appellant's degree of reliance and effort through the appeal on pursuing a spatial tack to the tilted balance was largely of its own volition and effort.

14. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated in relation to the appeal.
15. For the reasons given above, I refuse the application for an award of costs.

David Spencer

INSPECTOR.